

### REMARKS/ARGUMENTS

Claim 1 is amended as requested by the examiner. Withdrawal of the objection to claim 1 is respectfully requested.

Claims 1-7, 9-17 and 19-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bruyere et al. (US 2004/0057791) in view of Girotti (US 5,046,884).

Claim 18 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Bruyere et al. and Girotti in view of Lohrman (US 5,145,278).

Claim 1 defines a lightweight, portable roadway barrier, wherein the weight of the barrier is less than 200 kg per metre of length of the barrier, wherein the barrier is a stand alone barrier in that it does not require additional mass to function as a barrier, and wherein the barrier comprises (a) a structural framework and (b) panels mounted to opposite sides of the barrier. The claim defines that the purpose of the structural framework is to resist collapse of the barrier in response to impact of a vehicle. The purpose of the panels is to deflect a vehicle on impact with the barrier. The claim requires that the structural framework comprises an assembly of (i) upright members at opposite ends of the barrier, (ii) at least one upright member between the end members, and (iii) at least one longitudinal member extending along the length of the barrier and connected to each of the upright members. The structural framework of claim 1 is a combination of upright members and longitudinal members that are connected together.

In contrast, Bruyere et al. discloses a roadway barrier that comprises upright members 11, 13 at opposite ends of the barrier and intermediate upright members 12 positioned between the ends and panels 6, 7 on opposition sides of the barrier. Bruyere discloses that the panels 6, 7 are connected to and supported by the upright members 11, 12, 13. There is no disclosure that the Bruyere barrier comprises at least one or more longitudinal member that interconnects the upright members 11, 12, 13. This is a significant point because it is a clear indication that Bruyere has not appreciated a fundamental basis of the present invention. Specifically, Bruyere does not teach or suggest separating the structural requirements to resist collapse and the side deflection requirements of a barrier. Separation of the two requirements of a barrier makes it possible for the barrier to be lightweight and effective as an impact absorbing member that resists collapse and a member that can deflect vehicles.

The examiner argues that it would have been obvious to modify the Bruyere barrier to include longitudinal members 12 disclosed in Girotti. In particular, the examiner argues that this would have been obvious "to prevent the barrier from collapsing during impact" - see page 3, lines 12/13 of the Office action. However, Girotti discloses a concrete barrier having structural components embedded in the concrete body of the barrier for the purpose of interconnecting a plurality of barriers in end-to-end relationship. The structural components include end fittings and at least one longitudinal member 12 extending between and connected to the end fittings. The structural components are described by Girotti as "coupling devices". These coupling devices are provided to interconnect adjacent barriers, not to resist collapse in response to impact of a vehicle. Rather, the coupling devices form a connection between adjacent barriers but do not form a structural framework of claim 1. Specially, contrary to the above-quoted comment in the Office action, the coupling devices would not prevent the barrier from collapsing during impact. Therefore, even if it would have been obvious to a person of ordinary skill in the art to use the longitudinal members 12 of Girotti in the Bruyere barrier (which Applicant does not concede), the combination does not meet the structural limitations of claim 1.

Further, Applicant asserts that it would not have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bruyere to utilize a section of rebar 12 from the concrete traffic barrier 4 that connects stirrups 6b and 17b of Girotti. Rather, Bruyere is a steel barrier that utilizes non-slipping skids 9, end connectors 11, 13 and intermediate connectors 12 to support steel slides 6, 7 and thereby resist movement and deformation of the elongated element 1. There is no teaching or suggestion to add an additional component to Bruyere to increase the strength and prevent collapse during impact. Further, one of ordinary skill in the art would not look to the rebar 12 of Girotti, because the rebar 12 connects to stirrups 6b and 17b to strengthen the connection between the concrete traffic barrier and the respective one of the flange 15 and the trough 5. The rebar 12 strengthens the connection between adjacent barriers, but does nothing to prevent the individual barriers from collapsing.

Lohrman does not teach or suggest a structural framework including a combination of upright members and longitudinal members that are connected together, as required by claim 1. Therefore, Bruyere, Girotti and Lohrman, taken alone or in combination, do not teach or suggest each and every element of claim 1. Therefore, claim 1 is patentable over Bruyere, Girotti and Lohrman. Claims 2-7 and 9-21 depend from claim 1 and are allowable for the same and other

reasons not specifically mentioned herein. Reconsideration of the prior art rejections is respectfully requested.

New claim 22 is added and is additionally allowable over Bruyere, Girotti and Lohrman. Specifically, claim 22 requires that the panels extend to a location vertically above the at least one longitudinal member to thereby form a recess in a top of the barrier. In contrast, Bruyere does not teach or suggest a longitudinal member. Girotti does not teach or suggest a recess in a top of the barrier. Rather, Girotti discloses a solid, concrete barrier. Lohrman does not teach or suggest, nor does the examiner allege that Lohrman teaches or suggests a longitudinal member.

New claim 23 is added and is additionally allowable over Bruyere, Girotti and Lohrman. Specifically, claim 23 requires that the upright members at opposite ends each comprise at least one hinge plate having a respective opening, the opening sized to receive a hinge pin to connect adjacent portions of the barrier. In contrast, Bruyere discloses that one end 2 includes openings 4 and the other end 3 includes linking elements 5 that extend into respective openings 4 to connect portions of the barrier. Girotti discloses that one end includes a flange 15 and the other end includes a trough member 5 that receives the flange 15 to connect portions of the barrier. Lohrman discloses that two modified I-beams 12 are joined by a connecting plate 38 that is welded between the two modified I-beams 12, see col. 5, lines 57-67.

Respectfully submitted,

/julianne m. cozad smith/

Julianne M. Cozad Smith  
Reg. No. 62,174

Docket No.: 043153-9104  
Michael Best & Friedrich LLP  
100 East Wisconsin Avenue  
Suite 3300  
Milwaukee, Wisconsin 53202-4108  
414.271.6560